
print name on the line above as your signature

INSTRUCTIONS:

1. This Exam #2 must be completed within the allocated time
(i.e., *between 10:30 AM and 11:45 AM*).
It is a **closed book** and open mind exam.
2. Sign your copy of the exam (i.e., sign above).
On your blue computer graded bubble sheet:
[2A] PRINT your LAST name,
[2B] BUBBLE in your LAST name,
[2C] provide the NUMERALS of your NU ID #, and
[2D] BUBBLE in your NU ID #.
3. **Recall the material difference between i.e. (that is) versus e.g. (for example).**
4. When you finish your exam,
collect all of your personal items before approaching the professor
to exit the exam room upon finishing.
Turn in this signed copy of your exam and your completed blue bubble answer sheet.
5. This Exam #2 is worth 300 of the course total of 1,000 points.
This objective exam has 52 questions graded as if there are 50.
Each correct answer on this Exam #2 is worth 6 course points.
Based upon the instructor's statistical analysis of all students' answers,
the instructor unilaterally may alter the grading of specific exam questions.
6. An answer key and the distribution of earned grades will be distributed in class on
Monday, March 14.
7. As detailed below in paragraph 8,
any student may appeal the grading of any other exam questions. However, only if a
student successfully appeals the ambiguity of **AT LEAST THREE** questions on this
exam does that student objectively demonstrate non-harmless error due to any
ambiguities. Also, a successful appeal only will change *that* student's exam grade and
only will do so by the number of successful appeals in excess of **TWO** successful
appeals. *Appeals only affect the exam grades of those students that appeal.*
8. **All appeals** of this exam's questions must be:
[8A] typed;
[8B] signed by the student in three ways, typed name, handwritten signature, and typed
university identification number;
[8C] immediately following the signature, list in sequence, *solely by number*,
each of the questions being appealed;
[8D] after the [8C] list, argue each question, one at a time;
[8E] at the beginning of each question's [8D] appeal,
identify two or more reasonable meanings that the question could have had;
[8F] argue why one or more of the [8E] identified reasonable meanings
is as appropriate or is more appropriate than
the meaning used for the answer key answer; and
[8G] personally handed to the instructor's suite secretary in MH 228 or to the instructor
no later than 11:30 AM, Wednesday, March 16, time is of the essence.

NOTES:

- A. Since Professor O'Hara is not in the exam room during your taking of Exam #2, and since you might have some question about the wording of an exam question, and since O'Hara is interested in any ambiguity experienced during an exam, if you have such a question, then
- [i] ANSWER THE QUESTION ON YOUR BLUE BUBBLE SHEET, and
 - [ii] note the exam question number next to your signature on page 1, and
 - [iii] next to that exam question write out your explanation of your confusion.
- B. Recall the material difference between i.e. (that is) versus e.g. (for example).
- C. Use bubble A for TRUE and bubble B for FALSE.
- D. If a question contains a number (e.g., Amendment IX), then the truth or falsity of that question never depends upon that number.
This is not a test of trivia recall.
It is an objective demonstration of your subjective knowledge.
- E. For clarity in distinguishing a "principal" from a principal as well as distinguishing from an "agent" from an agent, quote marks will be used for the generic words "principal" and "agent" and no quote marks will be used for the specific words principal and agent. That is, "principal" **and** "agent" refer to all three relationships (*i.e., principal **and** agent; **and** principal **and** independent contractor; **and** employER **and** employEE*).
- F. For clarity in distinguishing transactions that resemble contracts but do not satisfy all of the requirements for contracts, this exam shall identify such transactions with quote marks ("contract"). Thus, the type word **contract** without quote marks means an actual contract; whereas, the word "**contract**" with quote marks means not a contract.

QUESTIONS:

- 1. T F** All citizens as well as all consumers
always are both natural persons and legal persons. (1:4)
- 2. T F** A plaintiff must have standing to sue (*i.e., an injury in fact*). (1:5)
- 3. T F** Arbitration can be binding or can be non-binding.
In Nebraska,
a natural person who has contractual capacity
has the capacity required to enter into an arbitration contract
to arbitrate all legal issues: past, present, of future. (1:7)
- 4. T F** An appellate court will affirm the trial court
unless
the trial court makes a non-harmless error of
fact, procedure, or law. (1:12)
- 5. T F** The Police Power
is the power of a USA State government to regulate for the People's
health, safety, morals, and general welfare.
The USA federal government does not have the Police Power. (1:13)
- 6. T F** Commercial free speech
is in the penumbra of the fundamental constitutional right of free speech.
(1:16)
- 7. T F** Procedural due process
requires both notice and hearing; and
both must be proportional to the interests involved. (1:18)
- 8. T F** A tort (*e.g., conversion*)
is a civil wrong.
A crime (*e.g., larceny*)
is a legislatively defined and prohibited wrong to the whole of society.
Sometimes, but not always, a tort has a similar crime.
Sometimes, but not always, a crime has a similar tort. (1:27)
- 9. T F** Proximate cause
exists if at the time of the defendant's action
that is the actual cause of the plaintiff's damages
those damages were reasonably foreseen by the defendant. (1:29)

- 10. T F** Damages are recoverable for legally recognized injuries.
Both in tort law and in contract law
compensatory damages
are the primary measure of damages;
and,
those tort and contract compensatory damages are
to make the plaintiff whole. (1:30)
- 11. T F** All of the elements of a contract are:
agreement, capacity, consideration,
reality of assent, form, and legal subject matter.
- 12. T F** Under the Objective Theory of Contracts the parties' agreement
must be sufficiently definite that the court can enforce the parties'
objective intent.
Accordingly,
the only way to accept a unilateral contract is with performance.
- 13. T F** It is rare, but an
advertisement can be an offer by the offerOR that under the
Mirror Image Rule
empowers the offerEE to create a contract by acceptance.
- 14. T F** The four material terms of all contracts are:
parties, time, consideration, and subject matter.
- 15. T F** The Mail Box Rule
empowers the offerOR to select the method of communication that the
offerEE must use to accept the offerOR's offer.
The Mail Box Rule
empowers the offerEE to both accept the offer
(thereby creating a contract at the instant of acceptance)
as well as
empowers the offerEE to revoke that acceptance
prior to
the offerOR's justifiable detrimental reliance upon
the offerEE's acceptance
- 16. T F** An agreement to agree
is an
option contract.

- 17. T F** If the parties have a bargained for exchange of legally sufficient value, then the parties' transaction is supported by consideration.
- 18. T F** Both past consideration (*e.g., pay with a check*) and pre-existing duty when in a bargained for exchange objectively manifest the parties' objective intent to be bound to a contract.
- 19. T F** If the parties' exchange illusory promises, then the parties have not agreed and do not have a contract. To avoid being illusory the parties must agree on quantity. Accordingly, a transaction is not a contract, but instead is a "contract", due to their exchanged promises being illusory if the seller's output or the buyer's requirements define the contractual quantity.
- 20. T F** Contract #1 may be discharged and contract #2 created by an accord and satisfaction. A liquidated debt may serve as consideration for an accord and satisfaction.
- 21. T F** The legal capacity required for a contract is the ability to grasp the natural consequences of one's actions.
- 22. T F** Objectively, but not necessarily subjectively, a natural person who obtains the age of majority has capacity; and, thus, when exposed to reasonable notice and/or reasonable experience, that natural person is rebuttably presumed to know.
- 23. T F** If any adjudicated insane natural person attempts to enter into a contract, then the resulting transaction is a void "contract".

- 24. T F** If any voluntarily intoxicated natural person attempts to enter into a contract, then, the resulting transaction is a voidable contract.
- 25. T F** Every parent, as an implied principal, always is legally liable for all necessities purchased by that parent's child, as an implied agent.
- 26. T F** If the parties enter into a valid contract or into a voidable contract, then those parties most likely will be limited to legal remedies in contract. If, however, the parties' transaction is an unenforceable "contract" or a void "contract", then the party with clean hands might get equitable remedies.
- 27. T F** The party suing for promissory estoppel must have capacity and must have given consideration.
- 28. T F** A contract that shocks the conscious of the court of law is unconscionable; and, thus, becomes an unenforceable "contract".
(NOTE: Yes, the first use of the word contract is intended to not be inside quote marks and the second use is intended to be within quote marks.)
- 29. T F** If the trial court finds the parties contract to be actionable in equity, then the trial court may either reform (*i.e., re-write*) the offensive terms of the parties' contract, or sever the offensive non-material terms from their contract, or void their entire contract. Nebraska prefers to void covenants not to compete that either overreach for an unreasonable time or an unreasonable area.
- 30. T F** A minor who is not liable to an adult for a transaction the parties objectively intended to be a contract might be liable in tort law to that adult for that transaction.

- 31. T F** The word "material",
in the common law, denotes something so important that
to change the material item
would change the mind of a Reasonable Person.
Three important common law uses of the word "material"
can be found in the causes of action for:
mutual mistake,
unilateral mistake, and
undue influence.
- 32. T F** A contract is a legally enforceable promise.
However,
the law allows
some promises that are not part of a contract to be enforceable.
Four important transactions of this nature are:
an employment agreement, a warranty, a bailment, and a license.
Generically,
in these four transactions
only the party to be liable needs to have capacity.
- 33. T F** A mutual mistake
exists if both parties make the same material mistake of fact.
- 34. T F** A unilateral mistake
exists if the non-mistaking party objectively knows
that the mistaking party is making a material mistake of fact.
- 35. T F** Common law fraud
exists if the defendant
knowingly and intentionally misrepresents or omits a material value,
thereby inducing the plaintiff's
justifiable reliance and proximately causing the plaintiff's damages.
- 36. T F** A security
is an investment in an enterprise with an expectation of profit.
- 37. T F** Objectively, silence, by itself, is not acceptance of a contractual offer.
Similarly,
objectively, silence, by itself, is not common law fraud.
- 38. T F** There are four forms of duress:
physical duress, emotional duress,
predatory economic duress, and privileged economic duress.

- 39. T F** In Nebraska, a fiduciary is rebuttably presumed to have engaged in undue influence.
This presumption is justified since obviously a fiduciary has the requisite opportunity and is in the best position to prove both the fiduciary's inclination and the appropriateness of the result. The fiduciary's duty of utmost good faith (*i.e., honesty in fact plus personalized objective*) also justifies this presumption.
- 40. T F** The Statute of Frauds requires five types of contracts to have their material terms in a written memorandum signed by the party to be sued. Those five contracts are:
sale of an interest in land;
sale of "goods" (*i.e., tangible and moveable*) at or over \$5,000;
might take longer than one year;
co-sign as a surety for the debts of another; and
in consideration of marriage (*e.g., pre-nuptial agreement*).
- 41. T F** A signature is any mark with the current intent to authenticate the record/document.
- 42. T F** The Parole (*i.e., oral*) Evidence Rule enforces the Statute of Frauds by barring from the courtroom all oral testimony related a written contract involved in a lawsuit.
- 43. T F** Both the old common law and the new common law of assignments and delegations have the same goal: satisfying the parties' reasonable expectations. Under the old common law all assignments of rights and all delegations of duties were presumed to defeat the parties' reasonable expectations. Under the new common law most assignments of rights are presumed to be consistent with the parties' reasonable expectations whereas most delegations of duties are presumed to defeat the parties' reasonable expectations.

- 44. T F** If either an assignment of rights or a delegation of duties either involves personal services or is expressly prohibited by the parties agreement, then under the new common law all such assignments and all such delegations violate the parties' reasonable expectations and are not permissible.
- 45. T F** A vest third party has standing to sue.
- 46. T F** Contractual conditions come in three forms: conditions precedent, conditions concurrent (*e.g., ready, willing, and able*), and conditions subsequent. Generically, a condition precedent creates (*i.e., turns on*) a legal duty, whereas a condition subsequent discharges (*i.e., turns off*) a legal duty.
- 47. T F** Contractual performance comes in three forms: complete performance, substantial performance, and a material breach. Complete performance discharges one's contractual duties and no damages are owed. Substantial performance is less than complete performance but is sufficient to be the reasonably expected performance, thus it discharges one's contractual duties but damages are owed for the breach. A material breach is less than substantial performance, it does not discharge one's contractual duties, and damages are owed. An anticipatory breach always is a material breach.
- 48. T F** Conditions can be express or can be implied. Breach of a condition is a material breach.
- 49. T F** Contracts can be discharged by operation of law. With respect to impossibility of performance (*e.g., market price changes by a factor of 10x*) and with respect to commercial impracticability (*e.g., market price changes by a factor of 3x*), this discharge by operation of law is similar to a mutual mistake; but, rather than the court judging the parties' objective intent at the time of contract formation the court is judging the parties' objective intent at the time of performance from the perspective of their agreement.

- 50. T F** If the party breaching a contract, at the time of breach, actually foresees the non-breaching parties' consequential damages, then the breaching party is liable for those consequential damages.
- 51. T F** The breaching party has a duty to mitigate damages.
- 52. T F** An exculpatory clause as a form of liquidated damages in an adhesion contract between a drafting merchant and a consumer is quite likely unenforceable; whereas, the identical exculpatory clause in a negotiated contract between merchants engaged in sophisticated risk management routinely is fully enforceable.

ANSWER KEY: Exam #2: LAWS 3930: Spring 2011

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|-----|--------|-----|--------|
| 1. | true. | 31. | FALSE. |
| 2. | FALSE. | 32. | true. |
| 3. | FALSE. | 33. | true. |
| 4. | FALSE. | 34. | true. |
| 5. | true. | 35. | FALSE. |
| 6. | true. | 36. | FALSE. |
| 7. | true. | 37. | true. |
| 8. | true. | 38. | true. |
| 9. | FALSE. | 39. | true. |
| 10. | FALSE. | 40. | FALSE. |
| 11. | true. | 41. | true. |
| 12. | true. | 42. | FALSE. |
| 13. | true. | 43. | true. |
| 14. | true. | 44. | true. |
| 15. | true. | 45. | true. |
| 16. | FALSE. | 46. | true. |
| 17. | true. | 47. | FALSE. |
| 18. | FALSE. | 48. | FALSE. |
| 19. | FALSE. | 49. | true. |
| 20. | FALSE. | 50. | FALSE. |
| 21. | true. | 51. | FALSE. |
| 22. | true. | 52. | true. |
| 23. | true. | | |
| 24. | FALSE. | | |
| 25. | FALSE. | | |
| 26. | true. | | |
| 27. | FALSE. | | |
| 28. | true. | | |
| 29. | true. | | |
| 30. | true. | | |